

IB11-149

E070272 SES-MOD-20110822-00985 IB2011004064  
New DBSD Satellite Services G.P., Debtor-in-Possession  
(Operate up to 1,000,000 METs),  
CONUS ,

DOCKET FILE COPY ORIGINAL

Approved by OMB  
3060-0678

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File Number: SES-MOD-INTR2011-04064

FCC APPLICATION FOR SPACE AND EARTH STATION:MOD OR AMD – MAIN FORM  FCC 312 MAIN FORM FOR OFFICIAL USE ONLY	FCC Use Only
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APPLICANT INFORMATION

Enter a description of this application to identify it on the main menu:  
Modification of ATC Authority (Call Sign E070272)

1-8. Legal Name of Applicant

<b>Name:</b>	New DBSD Satellite Services G.P., Debtor-in-Possession	<b>Phone Number:</b>	703-964-1417
<b>DBA Name:</b>		<b>Fax Number:</b>	703-964-1401
<b>Street:</b>	11700 Plaza America Drive Suite 1010	<b>E-Mail:</b>	stephen.deweese@ico.com
<b>City:</b>	Reston	<b>State:</b>	VA
<b>Country:</b>	USA	<b>Zipcode:</b>	20190 -
<b>Attention:</b>	Stephen M. DeWees		

9-16. Name of Contact Representative

<b>Name:</b>	Peter Corea	<b>Phone Number:</b>	(202) 577-1491
<b>Company:</b>	New DBSD Satellite Services G.P., Debtor- in-Possession	<b>Fax Number:</b>	
<b>Street:</b>	11700 Plaza America Drive Suite 1010	<b>E-Mail:</b>	peter.corea@ico.com
<b>City:</b>	Reston	<b>State:</b>	VA
<b>Country:</b>	USA	<b>Zipcode:</b>	20190-
<b>Attention:</b>	Peter Corea	<b>Relationship:</b>	Same

CLASSIFICATION OF FILING

<p>17. Choose the button next to the classification that applies to this filing for both questions a. and b. Choose only one for 17a and only one for 17b.</p> <p><input checked="" type="radio"/> a1. Earth Station</p> <p><input type="radio"/> a2. Space Station</p>	<p>(N/A) b1. Application for License of New Station</p> <p>(N/A) b2. Application for Registration of New Domestic Receive-Only Station</p> <p><input type="radio"/> b3. Amendment to a Pending Application</p> <p><input checked="" type="radio"/> b4. Modification of License or Registration</p> <p>b5. Assignment of License or Registration</p> <p>b6. Transfer of Control of License or Registration</p> <p><input type="radio"/> b7. Notification of Minor Modification</p> <p>(N/A) b8. Application for License of New Receive-Only Station Using Non-U.S. Licensed Satellite</p> <p>(N/A) b9. Letter of Intent to Use Non-U.S. Licensed Satellite to Provide Service in the United States</p> <p>(N/A) b10. Other (Please specify)</p> <p>(N/A) b11. Application for Earth Station to Access a Non-U.S. satellite Not Currently Authorized to Provide the Proposed Service in the Proposed Frequencies in the United States</p> <p>(N/A) b12. Application for Database Entry</p> <p><input type="radio"/> b13. Amendment to a Pending Database Entry Application</p> <p><input type="radio"/> b14. Modification of Database Entry</p>
<p>17c. Is a fee submitted with this application?</p> <p><input checked="" type="radio"/> If Yes, complete and attach FCC Form 159. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114).</p> <p><input type="radio"/> Governmental Entity    <input type="radio"/> Noncommercial educational licensee</p> <p><input type="radio"/> Other (please explain):</p>	
<p>17d.</p> <p>Fee Classification CGB – Mobile Satellite Earth Stations</p>	

<p>18. If this filing is in reference to an existing station, enter:</p> <p>(a) Call sign of station: E070272</p>	<p>19. If this filing is an amendment to a pending application enter both fields, if this filing is a modification please enter only the file number:</p> <p>(a) Date pending application was filed: (b) File number:  SESLIC2007120301646</p>
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#### TYPE OF SERVICE

<p>20. NATURE OF SERVICE: This filing is for an authorization to provide or use the following type(s) of service(s): Select all that apply:</p> <p><input type="checkbox"/> a. Fixed Satellite</p> <p><input checked="" type="checkbox"/> b. Mobile Satellite</p> <p><input type="checkbox"/> c. Radiodetermination Satellite</p> <p><input type="checkbox"/> d. Earth Exploration Satellite</p> <p><input type="checkbox"/> e. Direct to Home Fixed Satellite</p> <p><input type="checkbox"/> f. Digital Audio Radio Service</p> <p><input type="checkbox"/> g. Other (please specify)</p>		
<p>21. STATUS: Choose the button next to the applicable status. Choose only one.</p> <p><input checked="" type="radio"/> Common Carrier    <input checked="" type="radio"/> Non-Common Carrier</p>	<p>22. If earth station applicant, check all that apply.</p> <p><input type="checkbox"/> Using U.S. licensed satellites</p> <p><input checked="" type="checkbox"/> Using Non-U.S. licensed satellites</p>	
<p>23. If applicant is providing INTERNATIONAL COMMON CARRIER service, see instructions regarding Sec. 214 filings. Choose one. Are these facilities:</p> <p><input checked="" type="radio"/> Connected to a Public Switched Network    <input type="radio"/> Not connected to a Public Switched Network    <input checked="" type="radio"/> N/A</p>		

Place an 'X' in the box(es) next to all applicable frequency band(s).

Ku-Band (12/14 GHz)

and lower frequencies in MHz.)

Frequency Upper: 2200

(Please specify additional frequencies in an attachment)

the button next to the class of station that applies. Choose only one.

tion

tation

ACILITY:

mit-Only



Receive-Only



N/A

Select N/A."

## PURPOSE OF MODIFICATION

27. The purpose of this proposed modification is to: (Place an 'X' in the box(es) next to all that apply.)

- ☐ a — authorization to add new emission designator and related service
- ☐ b — authorization to change emission designator and related service
- ☐ c — authorization to increase EIRP and EIRP density
- ☐ d — authorization to replace antenna
- ☐ e — authorization to add antenna
- ☐ f — authorization to relocate fixed station
- ☐ g — authorization to change frequency(ies)
- ☐ h — authorization to add frequency
- ☐ i — authorization to add Points of Communication (satellites & countries)
- ☐ j — authorization to change Points of Communication (satellites & countries)
- ☐ k — authorization for facilities for which environmental assessment and radiation hazard reporting is required
- ☐ l — authorization to change orbit location
- ☐ m — authorization to perform fleet management
- ☐ n — authorization to extend milestones
- ☒ o — Other (Please specify)

## ENVIRONMENTAL POLICY

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental impact as defined by 47 CFR 1.1307? If YES, submit the statement as required by Sections 1.1308 and 1.1311 of the Commission's rules, 47 C.F.R. 1.1308 and 1.1311, as an exhibit to this application. A Radiation Hazard Study must accompany all applications for new transmitting facilities, major modifications, or major amendments.

☐ Yes ☒ No

**ALIEN OWNERSHIP** Earth station applicants not proposing to provide broadcast, common carrier, aeronautical en route or aeronautical fixed radio station services are not required to respond to Items 30–34.

29. Is the applicant a foreign government or the representative of any foreign government?

☐ Yes ☒ No

30. Is the applicant an alien or the representative of an alien?

☐ Yes ☐ No ☒ N/A

31. Is the applicant a corporation organized under the laws of any foreign government?

☐ Yes ☐ No ☒ N/A

32. Is the applicant a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?

☐ Yes ☐ No ☒ N/A



33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?

☐ Yes ☐ No ☒ N/A

34. If any answer to questions 29, 30, 31, 32 and/or 33 is Yes, attach as an exhibit an identification of the aliens or foreign entities, their nationality, their relationship to the applicant, and the percentage of stock they own or vote.

#### BASIC QUALIFICATIONS

35. Does the Applicant request any waivers or exemptions from any of the Commission's Rules?  
If Yes, attach as an exhibit, copies of the requests for waivers or exceptions with supporting documents.

☒ Yes ☐ No

36. Has the applicant or any party to this application or amendment had any FCC station authorization or license revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? If Yes, attach as an exhibit, an explanation of circumstances.

☒ Yes ☐ No



<p>37. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If Yes, attach as an exhibit, an explanation of circumstances.</p>	<p><input type="radio"/> Yes    <input checked="" type="radio"/> No</p>
<p>38. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition? If Yes, attach as an exhibit, an explanation of circumstances</p>	<p><input type="radio"/> Yes    <input checked="" type="radio"/> No</p>
<p>39. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items? If yes, attach as an exhibit, an explanation of the circumstances.</p>	<p><input type="radio"/> Yes    <input checked="" type="radio"/> No</p>
<p>40. If the applicant is a corporation and is applying for a space station license, attach as an exhibit the names, address, and citizenship of those stockholders owning a record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the Filer.</p>	

41. By checking Yes, the undersigned certifies, that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.

☒ Yes ☐ No

42a. Does the applicant intend to use a non-U.S. licensed satellite to provide service in the United States? If Yes, answer 42b and attach an exhibit providing the information specified in 47 C.F.R. 25.137, as appropriate. If No, proceed to question 43.

☒ Yes ☐ No

42b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station?United Kingdom

43. Description. (Summarize the nature of the application and the services to be provided). (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

Modification of ancillary-terrestrial component authority. See attached narrative.

Narrative

43a. Geographic Service Rule Certification

By selecting A, the undersigned certifies that the applicant is not subject to the geographic service or geographic coverage requirements specified in 47 C.F.R. Part 25.

☐ A

By selecting B, the undersigned certifies that the applicant is subject to the geographic service or geographic coverage requirements specified in 47 C.F.R. Part 25 and will comply with such requirements.

☒ B

By selecting C, the undersigned certifies that the applicant is subject to the geographic service or geographic coverage requirements specified in 47 C.F.R. Part 25 and will not comply with such requirements because it is not feasible as a technical matter to do so, or that, while technically feasible, such services would require so many compromises in satellite design and operation as to make it economically unreasonable. A narrative description and technical analysis demonstrating this claim are attached.

☐ C

CERTIFICATION

The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

button next to applicable response.)

	46. Title of Person Signing Director
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EMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT  
(Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION  
(Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

Application of

**NEW DBSD SATELLITE SERVICES G.P.,  
DEBTOR-IN-POSSESSION**

File No. SES-MOD- \_\_\_\_\_

Call Sign: E070272

**APPLICATION FOR MODIFICATION OF  
ANCILLARY TERRESTRIAL COMPONENT AUTHORITY**

August 22, 2011

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## ATTACHMENTS

**ATTACHMENT 1: RESPONSE TO FCC FORM 312, QUESTION 36**

**ATTACHMENT 2: RESPONSE TO FCC FORM 312, QUESTION 40, AND SCHEDULE A, QUESTION A20**



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

Application of

**NEW DBSD SATELLITE SERVICES G.P.,  
DEBTOR-IN-POSSESSION**

File No. SES-MOD- \_\_\_\_\_

Call Sign: E070272

**APPLICATION FOR MODIFICATION OF  
ANCILLARY TERRESTRIAL COMPONENT AUTHORITY**

**I. INTRODUCTION AND SUMMARY**

New DBSD Satellite Services G.P., Debtor-in-Possession (“DBSD”) seeks the consent of the Federal Communications Commission (“Commission” or “FCC”) for modification of its ancillary terrestrial component (“ATC”) authorization, as necessary, to waive certain rules applicable to ATC service to the extent requested and for the reason set forth herein.<sup>1</sup> DISH Network Corporation (“DISH”), Pendrell Corporation (formerly, ICO Global Communications (Holdings) Limited),<sup>2</sup> DBSD North America Inc., Debtor-in-Possession, and DBSD (collectively, the “Applicants”) are also filing an amendment to their April 8, 2011, application

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<sup>1</sup> In a January 15, 2010 order, the Commission granted New ICO Satellite Services G.P., DBSD’s predecessor-in-interest, blanket authority to operate ATC base stations and its MSS-ATC mobile earth terminals (“METs”) using its S-band MSS spectrum assignment. *See generally* New ICO Satellite Service G.P., Application for Blanket Authority to Operate Ancillary Terrestrial Component Base Stations and Dual-Mode MSS-ATC Mobile Terminals in the 2 GHz MSS Bands, *Order and Authorization*, 24 FCC Rcd. 171 (2009) (“*DBSD ATC Order*”).

<sup>2</sup> On July 21, 2011, Pendrell Corporation announced that its name change from ICO Global Communications (Holdings) Limited became effective. *See* Press Release, Pendrell, ICO Global Communications Name Change to Pendrell Corporation Becomes Effective (July 21, 2011), available at [http://www.pendrell.com/\\_files/Pendrell%20Name%20Change%20-%20CFO%20appointment%20release.pdf](http://www.pendrell.com/_files/Pendrell%20Name%20Change%20-%20CFO%20appointment%20release.pdf). Pursuant to Section 1.65 of the Commission’s rules, the Applicants notify the Commission of this name change. *See* 47 C.F.R. § 1.65.

for the transfer of control of the authorizations held by DBSD to DISH (the “DISH-DBSD Amendment”).<sup>3</sup> The Applicants are filing the Amendment to reflect a parallel and complementary transaction proposed in an application also being filed today by TerreStar Networks Inc., Debtor-in-Possession and TerreStar License Inc., Debtor-in-Possession (collectively, “TerreStar”) and DISH (“DISH-TerreStar Application”). Among other things, the Amendment also incorporates the requests made herein, and the DISH-TerreStar Application likewise seeks waivers intended to harmonize the regulatory regime applicable to the two authorizations.

*First*, consistent with FCC precedent,<sup>4</sup> DBSD requests a waiver of the integrated service requirement to allow DBSD and DISH to offer dual-mode terminals to all customers who want them, but make single-mode terrestrial terminals available to customers who do not need or desire the satellite function. *Second*, DBSD requests a waiver of the spare satellite requirement. *Finally*, DBSD asks the Commission to clarify that a certain measurement technique will be sufficient to confirm compliance with Section 25.252(a)(1) of the Commission’s rules.

## **II. WAIVER REQUESTS**

### **A. Waiver Requests and Criteria**

To increase its flexibility to be able to fully and efficiently utilize 2 GHz MSS spectrum to provide terrestrial mobile broadband while continuing to provide a robust satellite offering, DBSD requests certain waivers of the ATC rules addressed herein. The Commission may waive its rules for good cause shown, particularly where strict compliance with a rule is inconsistent

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<sup>3</sup> See Consolidated Application of ICO Global Communications (Holdings) Limited et al. and DISH Network Corporation for Authority to Transfer Control, File Nos. SAT-T/C-20110408-00071, SES-T/C-20110408-00424, SES-T/C-20110408-00425 (filed Apr. 8, 2011) (“DISH-DBSD Application”).

with the public interest when taking “into account considerations of hardship, equity, or more effective implementation of overall policy,”<sup>5</sup> especially when deviation on an individual basis does not require “evisceration of a rule by waivers.”<sup>6</sup> The Commission’s grant of these waivers will enable DISH to make commitments regarding its terrestrial mobile broadband network and service deployments. In support of the waivers requested herein, DBSD points to the commitments made by the Applicants in the DISH-DBSD Amendment and hereby incorporates these commitments by reference.

The Commission should act here on the National Broadband Plan’s recommendation that “[t]he FCC should take actions that will optimize licensee flexibility sufficient to increase terrestrial broadband use of MSS spectrum, while preserving market-wide capability to provide unique mission-critical MSS services.”<sup>7</sup> Grant of these waiver requests will better serve the public interest and the goals of the Commission’s MSS/ATC policy than would strict application of the ATC rules. DBSD emphasizes that it is asking for a waiver of the Commission’s rules in the individual circumstances of this case, in light of DISH’s plan, the availability of the GENUST<sup>TM</sup> phone and its future iterations, the unique features of the 2 GHz band and its existing licensees, and DISH’s commitment to MSS services, as further described in the DISH-DBSD Amendment. DBSD is not asking for the application of new or different rules for MSS/ATC services.<sup>8</sup>

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<sup>4</sup> See LightSquared Subsidiary LLC, Request for Modification of its Authority for an Ancillary Terrestrial Component, *Order and Authorization*, 26 FCC Rcd. 566 (2011).

<sup>5</sup> 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>6</sup> *WAIT Radio*, 418 F.2d at 1159.

<sup>7</sup> Federal Communications Commission, Connecting America: The National Broadband Plan, 87 (2010) (“National Broadband Plan”).

<sup>8</sup> Compare *WAIT Radio*, 418 F.2d at 1153 (noting that the Commission may grant a waiver of its rules for good cause shown), with *Cities of Anaheim, Riverside, Banning, Colton and Azusa*,

## **B. “Integrated Service” Requirement**

DBSD requests that the Commission waive application of the ATC “integrated service” rule<sup>9</sup> to permit DBSD and DISH to provide dual-mode terminals to customers who want them, and single-mode terrestrial terminals to customers who do not want the satellite function. Allowing DBSD and DISH to provide single-mode terrestrial terminals to customers who have no need for satellite functions will achieve significant public benefits, and will do so by better serving the important, underlying policy. DBSD and DISH are committed to securing the opportunity to deploy a terrestrial broadband network and will provide substantial satellite service – however, relief from the integration requirement is an important component of the plan.

Because DISH now intends to acquire both DBSD’s and TerreStar’s authorizations, satellites, and facilities, DISH will be able to offer consumers greater choice by continuing to make available the existing dual-mode GENUS<sup>TM</sup> phone (or a successor device) to customers who want the satellite function, and also make available single-mode devices (terrestrial only) for other customers. Thus, rather than severely restricting consumers’ choice of devices, DISH plans to provide customers with greater choice in devices according to their preferences. Furthermore, DBSD understands that DISH will take steps to ensure that customers are aware that both satellite and integrated, satellite-terrestrial service options are available to them.

Today, a mobile voice and data provider’s ability to attract customers depends in large measure on its ability to provide its customers with the types of devices that best suit their needs. In a world of lighter-and-smaller-is-better, consumers prefer lighter weight handsets with longer battery life. In addition, the requirement to make every device dual-mode severely limits a

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*California v. FERC*, 723 F.2d 656, 659 (9th Cir. 1984) (holding that an agency may not use an adjudication to circumvent the Administrative Procedure Act’s rulemaking procedures, by, for example, amending a rule).

provider's ability to enter into arrangements with multiple device and equipment manufacturers, thereby limiting consumer choice and severely impairing the business case economics.

Such a lack of choice compels consumers to shoulder the associated additional costs, while hampering the service's competitiveness by significantly limiting a provider's ability to attract customers. This does not make sense, particularly against the backdrop of increasing consolidation in the commercial mobile radio service arena, and does not further the Commission's goal of expanding the use of MSS/ATC service nationwide. To the contrary, it disserves the Commission's well-established policy in favor of efficient use of the spectrum.

Waiver of the integrated service rule in these circumstances will better serve the underlying Commission policy of creating a robust MSS service than would strict adherence to it. As noted above, the flexibility sought will allow DISH to acquire the critical mass of MSS/ATC subscribers necessary to create a viable terrestrial service offering. That mass of subscribers, in turn, will allow DISH to support the integrated network upon which its MSS offering also depends, lessening the per-subscriber cost of maintaining the network. In other words, by helping to ensure the viability of the MSS/ATC service through the provision of flexibility, the Commission will also help ensure a viable and substantial MSS service.

In the National Broadband Plan, the Commission rightly observed that its gating criteria had "made it difficult for MSS providers to deploy ancillary terrestrial networks."<sup>10</sup> This militates for flexible application of the integrated service requirement and favorable consideration of this waiver request subject to the safeguards described above.

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<sup>9</sup> See 47 C.F.R. § 25.149(b)(4).

<sup>10</sup> National Broadband Plan at 88.

– **C. Spare Satellite Requirement**

As DBSD and DISH have done in their DISH-DBSD Amendment, DBSD also requests a waiver of the Commission’s spare satellite “gating” requirement.<sup>11</sup> Under that rule, an MSS/ATC operator must have a spare satellite available on the ground within one year after commencing ATC operations and launch that satellite in the first commercially reasonable launch window following the failure of an MSS satellite.<sup>12</sup> The Commission adopted the spare satellite rule “to ensure that there would be redundancy of satellite service, while at the same time, retaining ATC operations as an ‘ancillary’ service in the event of launch failures or satellite malfunctions.”<sup>13</sup>

A waiver of the spare satellite requirement in this case will not undermine the purpose of the rule. That purpose is to ensure that MSS operators continue investment and innovation in their satellite systems, and that they move quickly to restore service following a satellite failure.<sup>14</sup> The highest risk of such failure occurs during the first year after launch, which covers the risk areas of launch, deployment, and early life failures. DBSD’s G-1 satellite has passed that risk period, meets its specifications, remains in good health, and is expected to provide uninterrupted service for the rest of its full design life of 15 years. In fact, DBSD’s G-1 satellite has enough propellant on board to last many years beyond the specified life. As a result, the need to launch a replacement satellite before the satellite’s end of life is already only a remote

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<sup>11</sup> 47 C.F.R. § 25.149(b)(2).

<sup>12</sup> *Id.*

<sup>13</sup> Mobile Satellite Ventures Subsidiary LLC, Application for Limited Waiver of On-Ground Spare Satellite Rule, *Memorandum Opinion and Order*, 22 FCC Rcd. 20548, 20549 ¶ 4 (2007) (“*MSV Waiver Order*”).

<sup>14</sup> Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd. 1962, 2006 ¶ 81 (2003).

possibility. Moreover, given the significant capacity available as a result of potential interoperabilities between DBSD's G-1 and TerreStar's T-1 satellites, it is likely that any capacity shifting or redeployment that might be needed for business concerns could be accommodated with limited additional support.

As noted above, DISH plans to deploy an MSS/ATC system using the full 40 MHz of S-band spectrum with in-orbit active and spare capacity on DBSD's G-1 satellite (currently positioned at 92.85° W.L.) and TerreStar's T-1 satellite (currently positioned at 111° W.L.). As a result, post-transaction, DISH will have two state-of-the-art satellites in orbit and capable of providing MSS in the S-band over all 50 states, Puerto Rico, and the U.S. Virgin Islands. Given the significant capacity available as a result of potential interoperabilities between DBSD's G-1 and TerreStar's T-1 satellites, it is likely that any capacity shifting or redeployment that might be needed for business concerns could be accommodated with limited additional support.

On the other hand, requiring DISH to complete and earmark two satellites as spares – one for each of DBSD's and TerreStar's authorizations – would be to require expenditure of over half a billion dollars and would serve no discernible policy. Worse, strict compliance with the spare satellite requirement would only serve to divert DISH's resources away from developing its hybrid MSS/ATC network. This is an unnecessary and unreasonable expense that would jeopardize the business case for entering the market in the first place. In particular, it would not increase the reliability of the MSS service to be provided and would, in fact, unnecessarily lengthen any potential service outage. Indeed, as the Commission noted in the *MSV Waiver Order*, launch of a spare satellite may take as long as 18 months,<sup>15</sup> during which time customers would have limited or no service.

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<sup>15</sup> *MSV Waiver Order*, 22 FCC Rcd. at 20550 ¶ 8.



This is not a case in which a nascent satellite operator is undertaking its first-ever satellite venture on a shoe-string. Managing a satellite fleet is at the core of DISH's business. DISH has a long history of building, launching, and operating satellites. DISH currently ensures continued operations of a satellite system relied upon by approximately 14 million households in a market where interruptions of service can be fatal to customer satisfaction. DISH has consistently done so without being subject to a ground spare requirement. This request amounts to no more than allowing DISH the flexibility to do with its MSS satellites what it does on a daily basis with its DBS satellites.

The Commission waived the spare satellite rule in the *MSV Waiver Order* based on a showing that each of the two operational L-band satellites would provide sufficient backup capacity for the other.<sup>16</sup> The Commission concluded that a waiver in that case "will strike an appropriate balance between ensuring continuity of satellite service to customers and minimizing cost burdens on the satellite operator."<sup>17</sup> A waiver in the present circumstances is equally justified, as strict compliance with the rule would not serve the public interest, and the requested waiver more effectively implements the Commission's overall policy.

**D. Request for Clarification of Section 25.252(a)(1) of the Commission's Rules**

Although the Commission has adopted an out-of-band emission limit for ATC base stations under Section 25.252(a)(1), the measurement technique to be used to measure compliance with the rule is not specifically enumerated. DBSD intends to demonstrate conformance with the base station limit using the same emission measurement technique that the Commission has previously approved to measure compliance with the equivalent requirements

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<sup>16</sup> *Id.* at 20550-51 ¶¶ 8, 12.

<sup>17</sup> *Id.* at 20551 ¶ 12.

for handsets in the band.<sup>18</sup> DBSD requests that the Commission clarify that this measurement procedure is acceptable.

### **III. PROCEDURAL REQUESTS**

#### **A. Permit-But-Disclose Status**

DBSD asks that the Commission designate the ex parte status of this proceeding as “permit but disclose” under the Commission’s rules. Doing so will facilitate the development of a complete record and is consistent with Commission decisions in similar proceedings.

#### **B. Consolidation Treatment with Amendment and DISH-TerreStar Application**

DBSD requests that the Commission consider this modification request jointly with the DISH-TerreStar Application. Because grant of the DISH-DBSD Amendment and Application and consummation of the transaction proposed therein will result in the transfer of this authorization to DISH, the certifications on the FCC Form 312 accompanying this exhibit, Questions 20 to 41 (including Attachments 1 and 2 hereto responding to Questions 36 and 40, respectively) were completed with respect to DISH. Therefore, the response on the instant Form 312 to these Questions are the same as the responses provided on the FCC Form 312s filed with the Commission as part of the DISH-DBSD Application and Amendment.

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<sup>18</sup> *DBSD ATC Order*, 24 FCC Rcd. at 195 ¶ 64. Compliance of the  $43 + 10 \log P$  rule will be based on use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. A narrower resolution bandwidth is permitted in all cases to improve measurement accuracy provided the measured power is integrated over the full required measurement bandwidth (i.e., 1 megahertz or 1 percent of emission bandwidth, as specified). The emission bandwidth is defined as the width of the signal between two points, one below the carrier frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

#### IV. CONCLUSION

Grant of the requested modification will enhance DBSD's ability to provide a robust and viable MSS/ATC service nationwide. As a result and as further set forth herein, the grant of this application is in the public interest.

Respectfully submitted,

/s/

Peter A. Corea  
Vice President, Regulatory Affairs  
**New DBSD Satellite Services G.P.,  
Debtor-in-Possession**  
11700 Plaza America Dr., Suite 1010  
Reston, VA 20190  
(703) 964-1400

August 22, 2011

## ATTACHMENT 1

### RESPONSE TO FCC FORM 312, QUESTION 36

This attachment provides details as to any “FCC station authorization or license revoked or . . . any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission,” as requested by FCC Form 312, Question 36, for DISH Network Corporation (with its affiliates DISH Operating L.L.C. (f/k/a EchoStar Satellite Operating L.L.C.) and Gamma Acquisition L.L.C., “DISH”).

In a *Memorandum Opinion and Order* released May 16, 2002, the Satellite Division of the International Bureau cancelled two conditional construction permits held by affiliates of the applicant DISH for 22 channels at the 175° W.L. orbital location.<sup>1</sup>

By an *Order* released July 1, 2002, the International Bureau cancelled DISH’s license for a Ka-band satellite system and dismissed a related modification application filed by DISH.<sup>2</sup> On November 8, 2002, the International Bureau reinstated DISH’s license for a Ka-band system as well as the related modification application.<sup>3</sup>

In a *Memorandum Opinion and Order* released April 29, 2004, the International Bureau denied, in part, four applications filed by DISH to operate GSO FSS satellites using the Ka and/or Extended Ku-bands at the 83° W.L., 105° W.L., 113° W.L., and 121° W.L. orbital locations.<sup>4</sup> DISH’s petition for reconsideration of this decision was denied.<sup>5</sup>

In a *Memorandum Opinion and Order* released August 3, 2004, the International Bureau declared null and void the space station authorization held by VisionStar, a DISH affiliate, for use of the Ka-band at the 113° W.L. orbital location.<sup>6</sup>

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<sup>1</sup> See EchoStar Satellite Corporation, Directsat Corporation, Direct Broadcasting Satellite Corporation, Consolidated Request for Additional Time to Commence Operation, *Memorandum Opinion and Order*, DA 02-1164 (rel. May 16, 2002).

<sup>2</sup> See EchoStar Satellite Corporation, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, *Memorandum Opinion and Order*, DA 02-1534 (rel. July 1, 2002).

<sup>3</sup> See EchoStar Satellite Corporation, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, *Memorandum Opinion and Order*, DA 02-3085 (rel. Nov. 8, 2002).

<sup>4</sup> See EchoStar Satellite LLC, Applications for Authority to Construct, Launch, and Operate Geostationary Satellites in the Fixed-Satellite Service Using the Ka and/or Extended Ku Bands at the 83° W.L., 105° W.L., 113° W.L., and 121° W.L. orbital locations, *Memorandum Opinion and Order*, DA 04-1167 (rel. Apr. 29, 2004).

<sup>5</sup> See EchoStar Satellite LLC, Petition for Reconsideration, Applications for Authority to Construct, Launch, and Operate Geostationary Satellites in the Fixed-Satellite Service Using the Ka and/or Extended Ku Bands at the 83° W.L., 105° W.L., 113° W.L., and 121° W.L. orbital locations, *Memorandum Opinion and Order*, DA 06-865 (rel. Apr. 14, 2006).

<sup>6</sup> See VisionStar, Inc., Application for Modification of Authority to Construct, Launch and Operate a Ka-Band Satellite System in the Fixed Satellite Service, *Memorandum Opinion and Order*, DA 04-2449 (rel. Aug. 3, 2004).

By letter dated May 19, 2005, the Satellite Division of the International Bureau denied DISH's applications for a Fleet Management Modification and for a Special Temporary Authority to move the EchoStar 4 satellite to 61.5° W.L., pending the Commission's consideration of another DISH request to move the satellite to 77° W.L., on the grounds that the purpose of the proposed fleet management modification was not consistent with the purposes of the Commission's rules and that there were no extraordinary circumstances for the grant of temporary authority.<sup>7</sup>

In a *Memorandum Opinion and Order* released June 3, 2005, the International Bureau denied DISH's application for a Special Temporary Authority to move the EchoStar 4 satellite to 77° W.L. on the grounds that DISH had failed to establish extraordinary circumstances for the grant of such authority.<sup>8</sup> However, the International Bureau later granted partial reconsideration of this order and then granted DISH's request to move the satellite to 77° W.L. where it would operate pursuant to Mexican authority.<sup>9</sup>

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<sup>7</sup> See Letter from Thomas S. Tycz, Chief, Satellite Division, International Bureau, FCC to Pantelis Michalopoulos, Counsel to EchoStar Satellite L.L.C., DA 05-1405 (May 19, 2005).

<sup>8</sup> See EchoStar Satellite L.L.C., Application for Special Temporary Authority to Conduct Telemetry, Tracking and Command Operations During the Relocation of EchoStar 4 to the 77° W.L. Orbital Location, *Memorandum Opinion and Order*, DA 05-1581 (rel. Jun. 3, 2005).

<sup>9</sup> See EchoStar Satellite L.L.C., Application for Special Temporary Authority to Conduct Telemetry, Tracking and Command Operations During the Relocation of EchoStar 4 to the 77° W.L. Orbital Location, *Order on Reconsideration*, DA 05-2067 (rel. Jul. 25, 2005); EchoStar Satellite L.L.C., Application for Special Temporary Authority to Conduct Telemetry, Tracking and Command Operations During the Relocation of EchoStar 4 to the 77° W.L. Orbital Location, *Order and Authorization*, DA 06-868 (rel. Apr. 18, 2006).

## ATTACHMENT 2

### RESPONSE TO FCC FORM 312, QUESTION 40, AND SCHEDULE A, QUESTION A20

This attachment provides details as to the ownership and corporate structure of Gamma Acquisition L.L.C. ("Gamma") and its parent, DISH Network Corporation ("DISH").

#### OWNERSHIP OF DISH AND GAMMA

Gamma is a direct wholly owned subsidiary of DISH. DISH is a publicly traded Nevada corporation. The stockholders owning of record and/or voting 10 percent or more of the voting stock of DISH include:

Ownership Interest	Citizenship	Approx. Equity Interest <sup>1</sup>	Approx. Voting Interest <sup>1</sup>
Charles W. Ergen <sup>2</sup> Chairman DISH Network Corporation 9601 South Meridian Blvd. Englewood, CO 80112	USA	53.3%	90.4%
The Goldman Sachs Group, Inc. <sup>3</sup> 200 West Street New York, NY 10282	USA	10.5%	0.85%

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<sup>1</sup> As of July 15, 2011.

<sup>2</sup> Includes both Class A common stock and Class B common stock ownership. Class B common stock is owned through several trusts. Mr. Ergen is deemed to own beneficially all of the Class A Shares owned by his spouse, Cantey M. Ergen. Mr. Ergen's beneficial ownership includes: (i) 478,302 Class A Shares; (ii) 19,026 Class A Shares held in the Corporation's 401(k) Employee Savings Plan (the "401(k) Plan"); (iii) the right to acquire 1,415,000 Class A Shares within 60 days upon the exercise of employee stock options; (iv) 235 Class A Shares held by Mr. Ergen's spouse; (v) 1,466 Class A Shares held in the 401(k) Plan by Mrs. Ergen; (vi) 20,130 Class A Shares held as custodian for Mr. Ergen's children; (vii) 27,000 Class A Shares held by a charitable foundation for which Mr. Ergen is an officer and (viii) 234,190,057 Class A Shares issuable upon conversion of Mr. Ergen's Class B Shares. Mr. Ergen has sole voting and dispositive power with respect to 149,183,340 shares. Mr. Ergen's beneficial ownership of Class A Shares excludes 4,245,151 Class A Shares issuable upon conversion of Class B Shares held by certain trusts established by Mr. Ergen for the benefit of his family.

<sup>3</sup> According to the Form 13F filed by The Goldman Sachs Group, Inc. (along with its affiliates, "Goldman") with the SEC on August 15, 2011, Goldman held in aggregate 21,821,878 Class A Shares as of June 30, 2011 (the 13F reporting date).

## **CORPORATE OFFICERS AND DIRECTORS<sup>4</sup>**

### **DISH Network Corporation**

#### **Executive Officers:**

Joseph P. Clayton	President and Chief Executive Officer
Thomas A. Cullen	Executive Vice President, Corporate Development
Bernard L. Han	Executive Vice President and Chief Operating Officer
Robert E. Olson	Executive Vice President and Chief Financial Officer
R. Stanton Dodge	Executive Vice President, General Counsel and Secretary
W. Erik Carlson	Executive Vice President, DNS and Service Operations
James DeFranco	Executive Vice President and Special Advisor to CEO
Michael Kelly	President, Blockbuster L.L.C.
Roger Lynch	Executive Vice President, Advanced Technologies
Stephen Wood	Executive Vice President, Human Resources

#### **Board of Directors:**

Charles W. Ergen	Chairman
Joseph P. Clayton	
Carl E. Vogel	
James DeFranco	
David K. Moskowitz	
Cantey M. Ergen	
Steven R. Goodbarn	
Gary S. Howard	
Tom A. Ortolf	

### **Gamma Acquisition L.L.C.**

#### **Executive Officers:**

Charles W. Ergen	Chairman
R. Stanton Dodge	Executive Vice President and General Counsel
James DeFranco	Executive Vice President

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<sup>4</sup>The address for all officers and directors of DISH Network Corporation and DISH Operating L.L.C. is 9601 South Meridian Blvd., Englewood, CO 80112.